

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUKASZ RUDKOWSKI,

Plaintiff,

- against -

FOX NEWS NETWORK, LLC

Defendant.

Docket No. 1:17-cv-4160

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Lukasz Rudkowski (“Rudkowski” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Fox News Network, LLC (“Fox” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted video of protestors in Berkeley, California, owned and registered by Rudkowski, a New York City-based photojournalist. Accordingly, Rudkowski seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Rudkowski is a professional photojournalist and videojournalist in the business of licensing his Videos and videos to online, print, and television stations for a fee. Rudkowski is the founder of We Are Change, an independent media organization that covers global protests, riots, and civil unrest.

6. Upon information and belief, Fox is a foreign limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 1211 6th Avenue, New York, New York 10036. Upon information and belief, Fox is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Fox has owned and operated a website at the URL: www.Video.FoxNews.com (the “Website”) and has operated and continues to operate a cable television station called Fox News Channel (the “TV Station”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Video

7. On April 15, 2017, Rudkowski videoed protestors in Berkeley, California (the “video”).

8. Rudkowski then uploaded the Video to his YouTube account WeAreChange. See <https://www.youtube.com/watch?v=c8GVtXfATtI>. The Video contained a We Are Change Logo. A true and correct copy of the Video is attached hereto as Exhibit A.

9. Rudkowski is the author of the Video and has at all times been the sole owner of all right, title and interest in and to the Video, including the copyright thereto.

10. The Video has a pending U.S. Copyright Office application number of 1-4965903365. See Exhibit B.

11. The fee has been paid and the work was deposited with the US Copyright Office.

B. Defendant's Infringing Activities

12. Upon information and belief, during its telecast of Fox & Friends, Fox publically displayed the Video and then placed it on their Website. See <http://video.foxnews.com/v/5400692903001/?#sp=show-clips>. The Website and TV Station prominently featured the Video. A true and correct copy of the Video on the Website and TV Station is attached hereto as Exhibit B.

13. Fox did not license the Video from Plaintiff for its Website or TV Station, nor did Fox have Plaintiff's permission or consent to publish the Video on its Website or TV Station.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST FOX)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Fox infringed Plaintiff's copyright in the Video by reproducing and publicly displaying the Video on the Website and TV Station. Fox is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Video.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Fox have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Video, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

21. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST FOX
(17 U.S.C. § 1202)

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-21 above

23. Upon information and belief, on its Website, Fox copied the Video from Plaintiff's Youtube page and cropped out the We are Change Logo and added "Twitter/@Huitz Warrior".

24. Upon information and belief, Fox intentionally and knowingly removed and altered copyright management information identifying Plaintiff as the Videographer of the Video.

25. The conduct of Fox violates 17 U.S.C. § 1202(b).

26. Upon information and belief, Fox's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Fox intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Video. Fox also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Video.

28. As a result of the wrongful conduct of Fox as alleged herein, Plaintiff is entitled to recover from Fox the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Fox because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

29. Alternatively, Plaintiff may elect to recover from Fox statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Fox be adjudged to have infringed upon Plaintiff's copyrights in the Video in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Fox be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.

3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Video; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 505;
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 3, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Lukasz Rudkowski